

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that laid-off section laborer L. F. Lusk, McCook Division, be paid section laborer's rate of pay of 40¢ per hour for eight hours on March 17th, 18th, 19th, 20th, and 21st, 1941.

EMPLOYEES' STATEMENT OF FACTS: Section laborer L. F. Lusk, Max, Nebraska, McCook Division, was laid off in force reduction in the Fall of 1940. When laid off he arranged to protect his seniority rights as section laborer under the provisions of Schedule Rule 15. On March 17, 1941 the section crew at Max was increased by a number of extra gang laborers being assigned to work under the jurisdiction of the section foreman. The laborers thus working under the jurisdiction of the section foreman worked on March 17th, 11 hours; March 18th, 9 hours; March 19th, 10 hours; March 20th, 10 hours; and March 21st, 11 hours.

Section laborer, L. F. Lusk, furloughed as a result of force reduction, was not called for service at Max, his home station.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: As stated in Employees' Statement of Facts, on March 17, 1941 the section crew at Max, Nebraska was increased by a number of extra gang laborers being assigned to work under the jurisdiction of the section foreman. L. F. Lusk, who held seniority rights as a section laborer while the extra gang laborers did not, was entitled to preferred consideration for assignment to service under the jurisdiction of the section foreman. A number of Schedule Rules specifically so provide. We quote Rule 15 and Rule 53 (a) and (b):

"RULE 15: When an employe laid off by reason of force reduction desires to retain his seniority rights, he must, within ten (10) days, file his name and address in writing, receipt of which shall be acknowledged, through his foreman with the roadmaster, master carpenter, maintenance of way welding supervisor, or superintendent of roadway equipment, and notify them in writing of any subsequent change in address, receipt of which shall also be acknowledged. When forces are increased he will be notified and will return to service within ten (10) days thereafter; failure to return to service within ten (10) days, unless prevented by sickness, or give satisfactory reason for not doing,

The claim in this case was initiated on March 28, 1941, and it was handled progressively until October 16, 1942, when the Management stated to the labor representative that he had not advised whether he disagreed with the facts presented nor indicated why he thought our conclusions were not acceptable. No response was received. Nothing further was heard from the case from October 16, 1942, until March 21, 1944, when notice was given of its submission to the Board. In the meantime the claimant has been a brakeman in train service nearly three years.

It is the position of the Management that:

- (1) the performance made the basis of dispute concerned the Max section on but two of the five days specified in the claim;
- (2) the Max section force was not increased until March 22, 1941, when the claimant was re-employed.
- (3) the steel extra gang laborers were distinguished from section gang laborers by their seniority, character of work, wage rate and basis for computing time; the extra gang laborers were under the supervision of the extra gang foreman who was responsible for their employment;
- (4) the extra gang laborers were not in any respect a part of the Max section gang.
- (5) the claimant's seniority extended only to the Max section gang as he did not exercise his option on the Roadmaster's territory under Rule 6 (d) and (e); and
- (6) not having exercised that option, Rule 53 (b), in its relation to other rules, assured him of nothing more than assignment to work on the Max section gang in preference to new men on that particular gang.

OPINION OF BOARD: On the dates herein involved, there was a section foreman and one section laborer in the section crew at Max, Nebraska. There was also an extra steel gang of 150 to 200 men working out of Max which were working under the supervision of an extra gang foreman and three assistant foremen. On the five days specifically referred to in the statement of claim, eight or ten laborers from the extra gang and the two man section crew were engaged in distributing material consisting of rail fastenings, tie plates, etc. along the track ahead of the main body of the extra gang. The Organization contends that this distribution of material was done under the direction of the section foreman with the result that the men used from the extra gang were doing section laborer's work.

The claimant, Roy F. Lusk, was the senior section laborer who had been laid off at Max because of a reduction of force. It is the contention of the Organization that Lusk should have been called for this work by the Carrier instead of its using extra gang laborers to do the work of section laborers.

Extra gang laborers have seniority in the extra steel gang but none as section laborers. Section laborers have seniority in their section crews but none in the extra gang. The duties of the two gangs are very similar except that section crews ordinarily perform work with a wider scope of duties than the extra steel gangs.

The Carrier argues that the men from the extra gang were not under the supervision of the section foreman but the proof of that fact is limited to a mere assertion thereof. If the men from the extra gang were under the supervision of the extra gang foreman or one of his assistant foremen, it seems to us that that fact could have been easily shown. The Carrier points out that the Max section time roll does not show any extra gang laborers on it and that they were all listed on the time roll of the extra gang. This is, of course, some evidence of the fact it purports to support but it is not a controlling one. If the mere addition or subtraction of names to or from time

rolls was the controlling factor, the current agreement would be subject to the unilateral action of the carrier in preparing its time rolls. This, of course, was never contemplated nor could it be so if the agreement is to have any binding effect.

We are of the opinion that the evidence sustains the contentions of the Organization that the eight or ten extra gang laborers were used to augment the section crew. Clearly, under the agreement, section crew laborers laid off because of reduction of force should have been called for that purpose. Lusk being the senior section laborer so laid off, he should have been called. The evidence sustains an affirmative award.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the current agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of November, 1944.